



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

L. Scott Baird
Executive Director

DIVISION OF DRINKING WATER
Marie E. Owens, P.E.
Director

Drinking Water Board

Roger Fridal, Chair
Kristi Bell, Vice-Chair
Scott Morrison
Jeff Coombs
David O. Pitcher
Eric Franson, P.E.
Barbara Gardner
Blake Tullis, Ph.D.
L. Scott Baird
Marie E. Owens, P.E.
Executive Secretary

DRINKING WATER ELECTRONIC BOARD MEETING

Via GoToMeeting

September 1, 2020 1:30 PM

FINAL MINUTES

1. Call to Order

Roger Fridal, Chair, called the Board meeting to order at 1:31 PM and read the written determination to hold the meeting electronically.

2. Roll Call – Marie Owens

Board Members present: Roger Fridal, Kristi Bell, Scott Morrison, Eric Franson, Blake Tullis, Jeff Coombs, David Pitcher, Barbara Gardner, Scott Baird.

Division of Drinking Water (Division, DDW) Staff present: Marie Owens, Director, Michael Grange, Heather Pattee, Skye Sieber, Allyson Spevak, Nathan Lunstad, Mimi Ujiie, Mark Berger, Julie Cobleigh, and Colt Smith.

3. Approval of the Minutes:

A. June 9, 2020

- David Pitcher moved to approve the June 9, 2020 minutes. Kristi Bell seconded. The motion was carried unanimously by the Board.

B. July 20, 2020

- Scott Morrison moved to approve the July 20, 2020 minutes. Jeff Coombs seconded. The motion was carried unanimously by the Board.

4. Disclosure for Intent to Publicly Comment - Roger Fridal

No disclosure for the intent to publicly comment was made.

5. Disclosure for Conflict of Interest - Roger Fridal

Roger Fridal disclosed a conflict of interest regarding the Bear River Water Conservancy District (BRWCD) project (Item 6(D)(1)(b)) as he is the mayor of Tremonton City.

The Board agreed that Roger be allowed to comment but abstain from voting on the BRWCD project.

6. Financial Assistance Committee Report

A. Status Report – Michael Grange

Michael Grange, Technical Assistance Section Manager with the Division of Drinking Water reported that currently there is a balance of approximately \$4,500,000 in the State SRF fund. Over the course of the next year, the Division is expecting \$4.5 million to be added to the fund. By August 1, 2021 there will be a total of approximately \$8.9 million available for State project allocation.

The SRF staff are currently working on closing loans for projects with Kane County, Virgin Town and Genola. Staff will follow up with Aurora City to determine if they want to proceed with their project which was authorized in August 2018. With projects as old as this, staff recommends that the loan be defunded and the applicant come back before the board with an updated project as the bids are probably no longer valid.

Michael then reported that currently there is a balance of just over \$17,000,000 in the Federal SRF fund. Over the course of the coming year, the Division is expecting another \$21 million to come into the fund from the EPA capitalization grant, state match, and principal and interest payments. By August 1, 2021 there will be a total of approximately \$38 million available for federal program projects.

SRF staff are currently working with Hyde Park and Sigurd Town to close their loans. Canyon Meadows' loan is now closed and the system is ready to start construction on their project. Staff are working with Forest Glen B to bring back the remaining balance, \$50,000, in their escrow account as they don't have a need for that funding.

B. Project Priority List – Michael Grange

Michael Grange reported that two new projects are recommended to be added to the Project Priority List: Wilson Arch West with 43.5 points with a pump and motor upgrades and replacement project, and Provo City with 12.9 points with a project consisting of two pump stations for aquifer storage and recovery. The Financial Assistance Committee recommends the Board approve the updated Project Priority List as presented, with the addition of these projects.

- Jeff Coombs moved to approve the updated Project Priority List. Kristi Bell seconded. The motion was carried unanimously by the Board.

C. SRF Debt Relief Policy - Michael Grange

During the June 9, 2020 Drinking Water Board Meeting, the Board requested a legal review of the SRF Debt Relief Policy as it pertains to declared states of emergency. During this, September 1, 2020 meeting, Paul McConkie, Assistant Attorney General, detailed his opinion on the matter.

Upon reviewing the authorities of both State and local governments, Paul is satisfied that both the Governor and local authorities have the authority to declare emergencies under Utah Code Title 53-2a. Paul also reviewed the SRF Debt Relief Policy in light of both the Federal and State Safe Drinking Water Acts and he is satisfied that the policy does comply with the law. The State has the ability and is given the latitude to adopt this policy to provide debt relief during declared states of emergency.

Paul pointed out that the loan parameters were amended in 2018 with the America's Water Infrastructure Act. In regards to loan parameters, Paul went on to make a correction to what was stated in the memorandum under subpart II. Application of Debt Relief Policy. For the record the correction comes from 40 CFR § 35.3525(a): "This assistance may be done by subpart I adjustment interest rate loans down to zero (0%) provided the recipient began annually repayment of principal and interest no later than 18 months after project completion." The correction within the memorandum is to subpart II(2): the corrected language now reads, "loan repayment is completed no later than 30 years after project completion, and 40 years for a disadvantaged community."

Michael confirmed for Blake Tullis that debt forgiveness isn't an option for loan recipients.

Paul confirmed that the policy reads as such to include an official state of emergency declared by either a State or local authority.

Eric Franson stated that even if a state of emergency is declared by anyone with that authority it doesn't necessarily trigger any decisions regarding loan relief. All situations will be evaluated independent of the state of emergency. In the end, declaring the state of emergency is a trigger but the work of assessing, understanding, and potentially adjusting a loan is left up to the staff working on those individual situations.

The key point in Paul's memorandum is that the declared state of emergency gives the ability for someone to apply for relief and then the Board or the Board's designee will make the decision to grant relief or not. The burden is on the applicant to show financial hardship to qualify for relief. As the Board considers the application, they will apply the law and the factors to determine whether relief is justified.

The policy was temporarily approved at the June 9, 2020 meeting until the legal opinion was obtained, in case there were water systems that may want to apply in the meantime.

- David Pitcher moved to approve the Debt Relief Policy that was presented. Eric Franson second. The motion was carried unanimously by the Board.

Michael Grange informed the Board that the Governor has issued an Executive Order extending the pandemic response; the Legislature failed to uphold it. So, every 30 days, as the Governor sees fit, he will review the Executive Order and decide to extend it or not.

Michael noted that the policy states 180 days after the declared emergency has ended, the Board no longer needs to or is required to accept applications for financial relief. Michael said that the Division is still not sure when water systems may apply for debt relief; would the Board be willing to entertain requests that extend beyond the 180 days after the declared emergency has ended? In regards to the pandemic, some water systems may not realize a shortfall until further down the road, maybe into 2021.

Eric believes that six months should be sufficient to take care of any issues. Furthermore, Eric thinks that due to an emergency, these systems are going to have to restructure their own debt, not just on the water system, but maybe on other components to their financial situation which may include raising water rates.

Blake pointed out that the wording to extend the 180-day timeframe is already in the policy: "The Board reserves the right to extend or shorten this timeframe based on extenuating circumstances." Blake likes the 180-day timeframe which gives people a solid deadline to reference. Scott Morrison and Roger Fridal both agreed with Eric and Blake.

D. SRF Applications

1) STATE

a. Axtell Community Service Distribution - Skye Sieber

Representing Axtell Community Special Service District was Travis Blackburn, Chair of the District, Jay, board member, and their engineers.

Skye Sieber informed the Board that Axtell Community Special Service District is requesting funding to assist with the planning and permitting needed to develop a secondary water source. A secondary source would meet Division requirements for communities which have more than 100 connections. The district intends to pursue construction funding through USDA Rural Development, but planning and permitting is first required. The deliverables for this planning project would be a preliminary engineering report, environmental clearances, and easements from the Bureau of Land Management and Utah Division of Water Resources.

The total amount for this planning effort is \$133,000; Axtell received a \$30,000 grant from USDA Rural Development and is requesting \$103,000 from the Board. The local MAGI for Axtell is \$47,200 which is 98% of the State MAGI. The current average water bill is \$56.13 which is 1.43% of the local MAGI. Their after-project water bill at full loan would increase to \$60.80 which is 1.55% of the local MAGI.

The Financial Assistance Committee recommends that the Board authorize a loan of \$103,000 at 2% interest for 20 years to Axtell Community Service Distribution.

Travis Blackburn explained to the Board that developing a secondary source is complicated by public lands, but having it would help the community. Travis confirmed for Scott Morrison that the secondary source being contemplated is a spring which needs to be developed.

Jeff Coombs inquired about the effect of the pipeline construction on the water bill. The District confirmed the construction would pose a significant financial burden on the community and in turn the water bill.

The District currently shares a source with Willow Creek Irrigation Company which owns the water rights. The District met with the Willow Creek Board which approved Axtell to explore the spring area as Axtell owns stock in the Willow Creek Irrigation Company. There have been discussions that going forward there will need to be a legal agreement between the two entities.

The District has met with both the Division of Water Resources and the Bureau of Land Management to determine their requirements for taking the pipeline across their lands. The former will need to go through the NEPA process to determine if the project will be feasible.

Marie pointed out that Axtell's IPS report shows that they failed to submit their 2015 consumer confidence report and have yet to submit the 2020 report. The District reported that they're working on completing the 2015 report. The District was under the impression that the 2020 report was complete. Marie asked that the system ensure documentation is submitted for both missing reports.

- Eric Franson moved that the Drinking Water Board authorize a loan of \$103,000 at 2% interest for 20 years to Axtell Community Special Service District. Jeff Coombs seconded. Eric amended his motion to include that the authorization is contingent upon resolution of outstanding IPS issues. Jeff Coombs accepted the amendment. The motion was carried unanimously by the Board.

b. Bear River Water Conservancy District - Heather Pattee

Representing BRWCD was Carl Mackley, General Manager.

Heather Pattee informed the Board that Bear River Water Conservancy District has a project consisting of two test wells for the Harper Ward area. They're going to use the information from the test wells in order to drill future larger production wells. Harper Ward does not currently have their own source. The cost of the project is estimated at \$402,010; BRWCD would contribute 50%, so the request from the Board would be \$201,005. The local MAGI for BRWCD is approximately 98% of the State MAGI. The after-project water bill would be \$71.39 which is 1.9% of the local MAGI. That amount would be over the recommended 1.75% of the local MAGI, so they do qualify for additional subsidy.

The Financial Assistance Committee recommends that the Board authorize a loan of \$141,000 at 0% interest for 20 years and a grant of \$60,005 to Bear River Water Conservancy District.

Heather clarified for Marie that the financial assistance was based on the Harper Ward area and not BRWCD as a whole.

- David Pitcher moved that the Drinking Water Board authorize a loan of \$141,000 at 0% interest for 20 years and grant of \$60,005 to Bear River Water Conservancy District. Scott Morrison seconded. The motion was carried unanimously by the Board.

c. Caineville Special Service District - Heather Pattee

Representing Caineville Special Service District was John Jackson, General Manager, and Kelly Chappell, engineer with Ensign Engineering.

Heather Pattee informed the Board that Caineville Special Service District has a project consisting of a treatment facility, fire hydrants, and tank upgrades. The cost of the project is estimated at \$600,000 with Caineville contributing \$5,000. No information was available for Caineville's MAGI as they're not a part of a town or municipality. In light of this, staff considered two different methods to determine if they qualified for additional subsidy: 1) The MAGI for the neighboring town of Hanksville was used which closely approximates Caineville's economic conditions. Hanksville's MAGI is 45% of the State MAGI. At full loan the estimated after-project water bill would be \$156.15 which is 8.6 % of the local MAGI. 2) The MAGI was used for the zip code which was \$34,800 or 72.5% of the State MAGI. At full loan the after-project water bill would be 5.39% of the local MAGI. In either method Caineville does qualify for additional subsidy.

The Financial Assistance Committee recommends that the Board authorize a loan of \$295,000 at 0% interest for 30 years and a grant of \$300,000 to Caineville Special Service District. Conditions include that they resolve any deficiencies on their IPS report and implement a rate structure for the water system.

David Pitcher asked which source is being treated and what is the type of treatment plant. John Jackson responded that the well is located in the Red Desert, four miles west of Caineville. It is an artesian well that maintains 20 lbs. of pressure at the well head and includes four miles of pipe. Treatment is needed for its high iron and manganese content; they use chlorine gas to oxidize the iron.

John Jackson expressed appreciation to the Board for their assistance. Caineville is an old system with parts that are hard to come by.

Jeff Coombs inquired if the residents are okay with the water bill going up. John replied that although the residents don't want their bill to increase, many residents are on the board and recognize that this project must happen.

The deficiency on their IPS report is minor; a missing check valve on the well. Marie stated that the Division recognizes there is no public health risk associated with this deficiency.

- Jeff Coombs moved that the Drinking Water Board authorize a loan of \$295,000 at 0% interest for 30 years and a grant of \$300,000 to Caineville Special Service District. Conditions include that they resolve any issues on their IPS report and implement a rate structure for the water system. Kristi Bell seconded. The motion was carried unanimously by the Board.

2) FEDERAL

a. Provo City - Skye Sieber

Skye Sieber informed the Board that Provo City requested that their project be moved to the November 3, 2020 Drinking Water Board Meeting because they're pursuing additional funding at the October Board of Water Resources meeting.

b. Wilson Arch Water & Sewer Company - Skye Sieber

Representing Wilson Arch Water & Sewer Company was Dawn Howe and Dan Hawley, their consultant from Jones and DeMille Engineering.

Skye Sieber informed the Board that the Wilson Arch Water & Sewer Company loan application came in after the Financial Assistance Committee meeting, so this will be a staff recommendation. The company is in San Juan County and is requesting funding to upgrade distribution pumps, motors, and controllers for the west side system. During a recent technical inspection, it was discovered that one of the pumps is on the verge of failure and needs to be replaced soon to prevent contamination of the system. This project is for federal funding and scored 43.5 points on the project priority list.

The total amount of funding needed is \$58,800; the system will contribute \$800 of in-kind labor and is requesting \$58,000 from the Board. The local MAGI, based on the zip code area for the Wilson Arch community, is \$35,700 which is 74% of the State MAGI. The system currently provides water to 18 connections and the average water bill is \$83.22 which is approximately 2.8% of the local MAGI. At full loan the after-project water bill would be \$96.99 which is 3.26% of the local MAGI. Based on the ratio of the local MAGI to State MAGI, as well as their after-project water bill, they do qualify for additional subsidy.

Division staff recommends that the Board authorize \$58,000 in principal forgiveness to Wilson Arch Water & Sewer Company.

At the time of this meeting the Division had the two sides of this system divided; Wilson Arch West and Wilson Arch East. The intent is to consolidate the two sides into one public water system, Wilson Arch Water & Sewer Company. Marie reported that the Division artificially separated the two sides in an effort to help the system but that it was the wrong step. The Division needs to consolidate the two sides into one system. The system's intent is to then move the system to the special service district.

Marie reported that Wilson Arch East is currently a public water system and is in good standing with the Division. Wilson Arch West has significant deficiencies on their IPS report for unapproved facilities which include a pump facility, two storage tanks and two wells. Dawn Howe clarified that those facilities are a part of the engineering report that has yet to be approved.

Jeff Coombs asked that if the two sides are combined will it affect the MAGI and water bill. Dawn Howe responded that in the loan application she included the populations for both sides.

- Eric Franson moved that the Drinking Water Board authorize \$58,000 in principal forgiveness to Wilson Arch Water & Sewer Company. Scott Morrison seconded. The motion was carried unanimously by the Board.

7. Rural Water Association Report – Dale Pierson

Dale Pierson informed the Board that in the packet are the reports from the three individuals who perform work under contract with the Division. There have been some recent staff changes within RWAU; Terry Smith is now the compliance circuit rider and Janell Braithwaite is the new management technician. Janell introduced herself to the Board; she was previously the city recorder for Gunnison City and gained a lot of experience with water and sewer projects and funding.

8. Legislative Audit Report – David Gibson and Matt Harvey

David Gibson, Matt Harvey and Darin Underwood of the Office of the Legislative Auditor General presented to the Board the report of the 2020 Department of Environmental Quality (DEQ) Legislative Audit. Darin said that Marie was incredible to work with and that DDW was one of their favorite divisions. Also, DDW had the most complete record of data.

Chapter I Introduction

David Gibson presented the in-depth budget review of DEQ. Chapter I of the report provides various funding information including DDW revenues generated from fees and permits from 2015 to 2019. The total increase from 2015 (\$185,928) to 2019 (\$231,385) is about 24%. DDW has the lowest expenses of the DEQ divisions for Attorney General service expenditures. The Division's Attorney General expenses increased 89% from 2015 (\$27,800) to 2019 (\$52,662) which is the highest percent change within DEQ.

A major theme of the auditors' review was evaluating DEQ's regulatory efficiency and effectiveness. Regulated entities, inspections, deficiencies/violations, enforcement actions and compliance are key data framework elements that the auditors believe are essential to the Divisions' oversight and the entities that they regulate. The auditors found that some programs did not comprehensively collect certain elements of the framework or did not store them in such a way that the data was usable. Fortunately, DDW had all the elements needed to help the auditors determine their compliance.

Chapter II Division of Drinking Water Can Improve Water Systems' Time to Compliance

Of the four sizes of water systems which the Division regulates, the larger systems tend to resolve violations more quickly than the smaller systems. Very small systems which serve populations of 500 or fewer are more likely to allow violations to go uncorrected longer. One reason for this is that very small systems lack the expertise of larger systems which help correct violations.

The median time for water systems to correct significant deficiencies has been improving; the time to compliance has gone from 1,020 days in 2005 to just over 74 days in 2019. Although some water systems are still slow to resolve significant deficiencies. Most deficiencies were corrected

in less than one year, but 940 deficiencies, or 29%, took between one to five years to correct. While 114 deficiencies, or 4%, took five years or longer to correct. This is concerning because uncorrected significant deficiencies have the potential to lead to water contamination and public health problems.

The auditors found that the Division lacked enforcement action in earlier years but the trend toward enforcement has recently increased. In 2019 the Division enforced on 56 significant deficiencies, while 321 significant deficiencies received no enforcement. The auditors estimate that since 2015 the Division took enforcement action on 10% of the significant deficiencies. The Division has never issued a fine for a violation.

Exemptions from Rule are allowed by Utah Administrative Code. An exemption allows a water system to operate with a significant deficiency without enforcement from the Division. The auditors found that the Division does not periodically review compliance exemptions that it has granted to water systems. The number of exemptions granted is increasing, but oversight over past exemptions is not. The Division has 1,099 deficiency exemptions on record since 1981 without a mechanism for exemptions to be revisited either through periodic review or through expiration. Significant deficiencies posing public health hazards can persist indefinitely.

Auditor Recommendations for DDW

1. The auditors recommend that the Division of Drinking Water utilize its enforcement authority to correct significantly noncompliant water systems.
2. The auditors recommend that the Division of Drinking Water track and report the time it takes for its regulated entities to reach compliance.
3. The auditors recommend that the Division of Drinking Water periodically review water system exceptions for continued appropriateness.

In conclusion, the auditors pointed out that the overall direction of Division is the median time to correct deficiencies coming down, improving solving deficiencies, taking enforcement actions, and reviewing exceptions.

(DDW Director Marie Owens gave the Division's response to the audit under Item 10(A) Director's Report Legislative Audit Response.)

9. DDW Fee Update – Julie Cobleigh

Julie Cobleigh gave the Board an update on the Division's strategic planning process, highlighting fees. The strategic plan encompasses three goals; 1) strengthen public water systems through effective partnerships, 2) commitment to regulatory responsibilities, and 3) commitment to excellence. Under Goal #2, Objective #1 is to become sustainable and secure by diversifying balanced funding through developing a new fee structure. The subcommittee for Objective #1 evaluated and developed fee options, reviewed other states' fee structures, sought DDW internal feedback, conducted a strengths and weaknesses analysis, and from there created a fee proposal.

The fee proposal was presented to the Strategic Planning Committee. Two fee options were identified:

- 1) **Base Fees** are charged to the water systems annually (or on some other time interval). The fee can be a flat rate or it can scale based on the number of connections, the population count, or another parameter. Base fee options include a flat fee for all systems, based on system type, based on system size classification, charge per connection, and a charge per usage.
- 2) **Service Fees** are fees paid by water systems for specific services such as plan reviews, site visits, or sanitary surveys. The fees can vary based on the complexity of the task and/or the amount of staff time required. Service fee options include a SRF application fee, plan review and operating permit fee, new PWS review fee, exception fee, source protection fee, and a sanitary survey fee.

Based on their research and the strengths and weaknesses analysis, the subcommittee concluded the best approach was a hybrid; a base fee based on size classifications, and service-based exception fees. The subcommittee saw the importance of the equitability of a fee based on size and such a fee would provide a predictable and sustainable revenue stream. This base fee is also simple to implement and gives the Division the ability to be transparent and clear in its communication with public water systems. The exception fees came out of the Legislative audit which found that the Division should be reviewing and renewing exceptions on an ongoing basis. The exception fees would help to build the internal capacity needed to review and renew exceptions. The proposed exception fee schedule is broken into three tiers; Tier I - \$400 for simple exceptions; Tier II - \$750 for medium complex exceptions; and Tier III - \$1500 for complex exceptions.

Scott Morrison has been supporting the Strategic Planning Committee from the start and he commended Marie and the staff on their efforts. He reported that the work has been progressing well.

10. Directors Report – Marie Owens

A. Legislative Audit Response

Marie started by thanking Darin and the audit team and said that the Division will very seriously address the audit findings. The auditor team was wonderful to work with and communicated with the Division throughout the process. Early on we recognized that there were vulnerabilities within the Division. During the audit process, it was clear to the Division where the auditors were honing in and what they were finding, so DDW wasn't blindsided by this report. The audit process became part of the reason why the Division engaged in strategic planning.

The audit report highlighted the Division's significantly low revenue stream for dedicated credits as compared to the rest of DEQ's divisions. DDW has been sorely underutilizing the ability to collect fees for its entire existence and that needs to be rectified. The Division is likely to receive pushback from the regulatory community as it transitions to charging fees. At the time of this meeting the Division was six weeks into charging cost recovery fees for water systems that require extra attention for violations and enforcement orders. Since their inception, the Division has been communicating these cost recovery fees to the Board. The water systems can avoid these fees if they choose to come into compliance or avoid incurring violations.

Earlier in the meeting Julie Cobleigh presented the next fees proposed by the Division. With these proposed fees, water systems will be charged, on a tiered basis, for exceptions from rule. With the exception fee, a water system will have to decide if they want to pay to have the exception or, pay to fix the issue for which they are requesting an exception. Water systems will not be charged a fee for exceptions that are not granted. These proposed fees will take a year to be approved (by the Legislature) and be put into use, in the meantime the Division will continue to talk to the Board about them. The Division ended up with nearly 1,100 exceptions on record because historically it recommended exceptions to the water systems even if they weren't requested because they allowed us to avoid confrontation.

Starting this year, the Division will now only grant exceptions which expire and they're trying to communicate to the water systems that if you receive an exception which then expires, you will have to pay for its renewal. The Division will need to review the 1,100 existing exceptions and put them on a renewable schedule, but it currently doesn't have enough staff to perform that function. Currently, the Division only has enough engineering staff to review incoming plan reviews, issue operating permits, and handle new exception requests. The Division processes about 100 exception requests per year.

Another fee that the Division is considering is to annually charge water systems a fee for DDW's regulatory oversight. This fee would provide a sustainable source of revenue through dedicated credits. The existing cost recovery fees and the proposed exception fees are not sustainable sources of revenue because the water systems can choose to avoid them.

Marie wants to be sure the Board is aware of the direction the Division is going and asks the Board to voice input, concerns, or direction for the staff. The Board needs to be engaged enough that when people reach out to the Board members with questions or concerns they can either speak to the direction or push the questions back to the Division.

Jeff Coombs expressed concern that if the Division receives Legislative approval for some or perhaps all of the fees, will the general funds be reduced?

Marie clarified for Jeff that the money the Division receives from the general fund is almost exclusively from the WIRA account which is authorized to the Board for their matching amount to be able handle the SRF program. This money creates the State SRF fund, but a small amount, approximately \$1.2 million, of the WIRA account, which isn't required for SRF matching, is the amount of general fund for the Division itself. Scott Baird added that the intent isn't to replace general funds but rather to supplement the program and moving forward we anticipate using federal funds, general funds, and fees to help balance the program.

Eric Franson asked why there is such a large discrepancy between DDW and the other DEQ divisions regarding revenues and how did that happen?

Scott Baird replied that one reason is the demand for services on the other divisions compared to DDW. As the other programs provided new services they were able to charge new fees. Also, the initial federal funding structure for DDW differed from the other programs. Over the last several

decades it has been the status quo within DDW, but that is changing with the Division working toward getting systems into compliance and as such the federal funding is no longer sufficient.

Marie pointed out the other divisions have lengthy fee schedules and up until last year DDW had only three or four fees. Compared to the other divisions, DDW hasn't incurred as many legal fees because they haven't legally enforced anything throughout the history of its program. The Division needs to start using its enforcement authority in order to address that particular audit finding which in turn will lower time to return to compliance. DDW has estimated it will need about \$300,000 in legal fees to meet their responsibility to enforce the Safe Drinking Water Act. In order to meet that financial need, the Division is starting to look at dedicated credits.

In working with many water systems as an engineer, Eric understands the pushback that will occur on the fees. It's also important to understand the operational similarities amongst the divisions and getting them all on the same playing field. It's more important to understand the big picture of the entire DEQ and the need to balance all of the divisions, as opposed to just focusing on how this will negatively impact the water systems.

Scott Morrison agreed with Eric's comments. Scott mentioned that staff looked at how other states are funding their Drinking Water programs. The fees being proposed are consistent with how other states are handling it.

Marie stated that the Division of Drinking Water is going to re-identify as being a regulator. For years the Division has been so focused on technical assistance that perhaps we've forgotten that our core responsibility is to implement and enforce the Safe Drinking Water Act. The Division has a lot of great partners who can provide technical assistance to the water systems. The water systems are going to characterize the enforcement as detrimental and hitting their bottom line. Marie hopes that they will recognize it as a renewed commitment from the Division to follow up with the water systems, pay attention and be present throughout the process until issues are resolved.

Blake Tullis asked if Marie sees a conflict of interest or a perceived conflict of interest where people are basically paying for an exception? There could be the perception where the Division will provide more exceptions in order to bring in more revenue.

Marie responded that the rate of granting exceptions has dropped significantly under her leadership than it did under the former director's leadership. In the past the Division was pushing exceptions because it made their lives a lot easier while conducting sanitary surveys and inspections. Marie has decreased the number of granted exceptions because an exception says, it's ok for you to live with a significant deficiency, and Marie only grants an exception when the water system can demonstrate that there is sufficient public protection to equal the rule that was put in place. If an exception is granted, the Division is requiring additional monitoring or other steps the water system must take to ensure public protection. Marie doesn't know if the old, existing exceptions are providing adequate protection or are simply providing a free pass and as such they all need to be reviewed. The Division is fully aware that requests for exceptions will likely go down if fees are attached to them. The exception fees will be proposed for public comment very soon, followed by a public hearing.

The fee that the Division will rely on, which is one or two years out, is an annual water system fee because she doesn't want to get in a mode where we have to try to get more of the items that we do have fees on. The Division is shooting for dedicated credits to make up 25-30% of its portfolio. The Division wants to work out the details of an annual fee with its stakeholders. If the Legislature can't provide interim funding, the Division will need to implement an annual fee sooner rather than later. The building block granted to the Division during the 2020 Legislative Session would have given them five years for this transition, but was rescinded because of the pandemic. The Division will continue to seek future building block funding.

David Pitcher stated that it's a difficult position to be in where the number of small systems and the amount of technical assistance and also deficiencies applied to the smaller systems. The smaller systems are probably the least able to fund proportionate to the time and effort.

Marie said that David is right, the ability to pay becomes an issue. Will a water system who receives a loan from the Board with full principal forgiveness be able to pay an annual fee? The Division wants stakeholder buy-in to determine that the annual fee will be appropriate and seem fair to the industry as a whole.

David's opinion is that Utah is not nationally known to be a hard regulator but they provide technical assistance. He would hate to see that pendulum swing too far, but he isn't hearing that is being proposed. He thinks everyone wants to do well and doing so is for the public health of everyone.

Marie added that the Division hopes to soon develop and track a performance measure for the time to return to compliance on individual deficiencies. Once developed, the Division will share that performance measure with the Board and the Legislature. The Division wants to be genuine on the data it is presenting. Marie reiterated that the Division would really like input and feedback from the Board on the best way forward. Marie appreciated David's comment because the Division doesn't want to swing too far and be strictly focused on enforcement and not really understand the realities faced by small and large water systems; it needs to find a balance.

In closing, the Division agrees with the audit; they did a fair assessment and their findings are accurate. The Division is going to try to be responsive to the audit findings and resolve those situations.

B. Enforcement Report

Marie informed the Board that within the enforcement report, all of the water systems listed under corrective action have entered into legally binding enforcement agreements with the Division. The currently Not Approved water systems are also listed in the report with whom the Division are also working. Historically, the Division has not enforced on these orders, but they're now starting to move forward with enforcement.

C. New Employees: Mark Berger

Mark Berger was recently hired to be the new Rules Manager, replacing Rachael Cassady. Mark comes to DDW from the Division of Air Quality.

Other Division Personnel Changes

Assistant Director Ying-Ying Macaulay retired on August 1, 2020 and Nathan Lunstad has taken her place.

Michael Newberry is now the Permitting Manager, taking Nathan's place.

Several DDW recruitments were open at the time of this meeting; financial analyst, (2) engineering positions, and a level IV water treatment specialist / surface water treatment rule manager.

D. Other

11. Public Comment Period - Roger Fridal

No public comments were made.

12. Open Board Discussion - Roger Fridal

There was no open board discussion.

13. Other

14. Next Board Meeting

Date:	November 3, 2020
Time:	1:00 PM
Place:	To Be Determined

The Board discussed whether or not to hold this meeting in person or electronically. Jeff Coombs and Barbara Gardner would like to continue electronic meetings for the time being. Blake suggested the Board meet again in person when it's safe to do so but perhaps with the option for presenters to attend electronically. Eric Franson and Roger Fridal prefer face to face interaction and would like to hold the meetings in the same space when it's safe to do so.

15. Adjourn

- David Pitcher moved to adjourn the meeting. Blake Tullis seconded. The motion was carried unanimously by the Board.

The meeting adjourned at 3:56 PM.